

DOCUMENT RESUME

03788 - [A2774006]

[Claim for Death Gratuity for Husband]. B-189869. September 29, 1977. 3 pp. + enclosure (1 pp.).

Decision re: Lillian Lomax Kennon; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Military Personnel.
Budget Function: General Government: Central Personnel Management (805).
Organization Concerned: Department of the Army.
Authority: (54 Stat. 1061; 31 U.S.C. 71a; 31 U.S.C. 237). 10 U.S.C. 903 (Supp. IV). 10 U.S.C. 1475-80. E-187523 (1976). 42 Comp. Gen. 622. 42 Comp. Gen. 624.

The wife of a deceased Army member appealed a settlement which disallowed her claim for the death gratuity payable incident to the death of her husband who was killed in 1945. The claim was presented to the Army in 1945, but was not paid, and was presented to GAO in 1973. The pertinent records have been destroyed and the time limitation on presentation of the claim has passed; the claim was not paid. (Author/SC)

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Lillian Kennon
June 21



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189889

DATE: September 29, 1977

MATTER OF: Mrs. Lillian Lomax Kennon

DIGEST: A member of the Army was killed in 1945, and his wife's claim for the six months' death gratuity was presented to the Army in 1945, but apparently was not paid due to a lack of supporting documents, and the claim apparently was not received by GAO until 1973. Since the pertinent records have been destroyed, and in view of the time limit for presenting claims provided by 31 U.S.C. §§ 71a and 237 (1970), the claim may not be paid.

This action is the result of a letter dated June 21, 1977, from Mrs. Lillian Lomax Kennon appealing a settlement of our Claims Division dated April 5, 1973, which disallowed her claim for the death gratuity payable incident to the death of her husband, Staff Sergeant Boyce D. Lomax, USA, 20803792, who was killed in action on January 1, 1945.

Shortly after the death of Sergeant Lomax, Mrs. Kennon executed and filed with the Army Office of Special Settlement Accounts, a voucher for the purpose of obtaining payment of the death gratuity provided under 10 U.S.C. § 903 (Supp. IV, 1941-1945), now 10 U.S.C. §§ 1475-1480 (1970). By a letter dated February 15, 1945, that office informed Mrs. Kennon that to obtain payment she must also furnish it a certified copy of the public record of her marriage, and an affidavit from two disinterested persons that she was married to Sergeant Lomax at the time of his death.

According to Mrs. Kennon, since most of the people who had known Sergeant Lomax and her when they were married and living together were service people who were either dead or whose whereabouts were unknown to her at the time of her husband's death, and since she, an Army nurse, was sent overseas shortly after her husband's death, she never filed the necessary papers. She states that she forgot about the death gratuity until many years later when, while going through some of Sergeant Lomax's belongings, she came across the February 15, 1945 letter.

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Mrs. Kennon then contacted the Army about obtaining payment of the gratuity. The Army forwarded her claim to our Claims Division where it was received on February 27, 1973. In forwarding the claim the Army indicated that they were unable to determine whether payment of the gratuity had been made because their records had been destroyed in accordance with Government regulations.

In disallowing Mrs. Kennon's claim our Claims Division advised her as follows:

"Under our procedures, files pertaining to claims against the United States in which there has been no activity for a period of 12 or more years are destroyed in accordance with the law authorizing the disposition of old records. Pursuant to such procedures, our file opened in your husband's name in 1941 has been destroyed. Although subsidiary records show that allowances were issued in this case on June 6, 1945 and May 24, 1946, neither the subject matter of the claims, the amount allowed, nor the identity of the person or persons to whom payments were made can now be determined."

In her appeal Mrs. Kennon enclosed copies of documents concerning Sergeant Lomax's National Service Life Insurance and a Veterans Administration death pension. She states that those were the only payments she received as a result of Sergeant Lomax's death. She indicates that she did not receive the death gratuity because she did not complete the affidavit form and return it to the Army as she had been requested to do.

As Mrs. Kennon was advised by the Claims Division, it has long been established that where, as in this case, the records necessary to either justify or refute a claim have been destroyed pursuant to law, or have become unavailable due to the lapse of time, in the absence of clear and satisfactory evidence of validity and nonpayment, we may not give the matter favorable consideration where the claimant has failed to act on the claim for a long period of years. See decision B-187523, November 9, 1976.

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In this case while it may be that Mrs. Kennon did not receive the death gratuity, the records necessary to show whether or not the gratuity was paid, and if paid, to whom, have been destroyed. In any event from her statements and the documents which she sent us, it appears that Mrs. Kennon's claim for the death gratuity, although presented to the Army in 1945, was not received in this Office until she renewed her claim in 1973. In that case her claim is barred from consideration by the act of October 9, 1940, ch. 788, 54 Stat. 1061, 31 U.S.C. §§ 71a and 237 (1970), which provided in pertinent part:

"Every claim or demand * * * against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: Provided, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established."

A claim for a death gratuity first accrues on the date of death or determination of presumptive death, of the member in question. 42 Comp. Gen. 622, 624 (1963). Therefore, since Sergeant Lomax died on January 1, 1945, and since Mrs. Kennon's claim for the death gratuity apparently was not received in this Office until February 27, 1973, more than 28 years after her claim first accrued, it is forever barred.

While it is regrettable that Mrs. Kennon did not press her claim sooner, in these circumstances we may not now authorize payment. Accordingly, the Claims Division's disallowance of the claim is sustained.

R. F. Ketter
Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

Elli Harris
Miss Pao.

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September 29, 1977

The Honorable Russell B. Long
United States Senate

Dear Senator Long:

This is in response to your letter, with enclosures, of August 3, 1977, regarding the claim of Mrs. Lillian Lomax Kennon, 907 Marvin, Leesville, Louisiana 71446, for the death gratuity incident to the death of her husband, Staff Sergeant Boyce D Lomax, USA, in 1945.

We have carefully reviewed Mrs. Kennon's claim. However, as explained in our decision B-189889, dated today (copy enclosed), due to the period of time that elapsed between the claim's accrual and its receipt in this Office, we are precluded from authorizing payment since the pertinent records have been destroyed and the provisions of 31 U.S.C. §§ 71a and 237 (1970) barred payment of claims not received in our Office within 10 years of their accrual.

We trust this serves the purpose of your inquiry and regret that we cannot act more favorably on your constituent's claim.

Sincerely yours,

Acting

W. K. ...
Comptroller General
of the United States

Enclosure